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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 416

ANTHONY G. "AMOS" AMADIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (Pet. 21–42) are reported at 215 F. 2d 607 and 615.

JURISDICTION

The judgment of the Court of Appeals was entered on August 30, 1954, and a petition for a rehearing was denied on September 21, 1954 (Pet. 2). The petition for a writ of certiorari was filed on October 19, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the indictment, which alleged unlawful transportation of one girl, and the inducement of another to travel, in interstate commerce "for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality," charged offenses under the Mann Act.

2. Whether there was sufficient evidence of petitioner's intent to violate the statute.

3. Whether the trial court abused its discretion in denying petitioner's motion for a bill of particulars.

4. Whether the circumstances under which two government witnesses refused to answer questions on the ground of self-incrimination deprived petitioner of a fair trial.

5. Whether petitioner was prejudiced by various rulings on the admission of evidence.

STATUTES INVOLVED

18 U. S. C. 2421 provides in pertinent part:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other im-

moral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; * * *

* * * * *

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U. S. C. 2422 provides:

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

On October 3, 1953, following a trial by jury, petitioner was convicted, in the United States District Court for the Southern District of Indiana, on counts I and IV of a five-count indictment, drawn under the Mann Act (R. 3, 472, 4–6). Count I charged that on August 30, 1952, petitioner "did unlawfully and knowingly induce" and cause Frieda West to travel, as a passenger upon a common carrier, from Evansville, Indiana to Chicago Heights, Illinois, "for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality," in violation of 18 U. S. C. 2422 (R. 4; Pet. 46). Count IV charged that on August 16, 1952, petitioner and Grover Craig, in violation of 18 U. S. C. 2421, "did unlawfully and knowingly transport Mary Katherine Hamilton" from Evansville, Indiana to Calumet City, Illinois, "for an immoral purpose," described in the same terms as in count I (R. 5–6; Pet. 47–48). Petitioner was sentenced to concurrent terms of three years' imprisonment on each of the two counts (R. 3, 473). On appeal, the judgment of convic-

tion was affirmed by a divided court (Pet. 21, 37).[1]

The evidence to support the conviction may be summarized as follows:

Petitioner was the owner of a tavern on State Street in Calumet City, Illinois, known as the Derby Club (R. 337–338). The establishment was located in a two-block section which included 26 taverns and night clubs (R. 47, 158, 159, 167–168). Like other taverns in the area (see R. 165–167), petitioner employed "B" girls to solicit drinks for themselves (in reality colored water) from men customers. The girls received commissions on the drinks sold, with a guaranteed salary of $40 per week, less $10 for lodging (R. 34, 42, 73, 145). The place was merely a large room with a bar, a band stand and booths (R. 37, 147). The back booths were dimly lighted, and if girls took men back there, "double shots" had to be ordered (R. 38, 39, 130, 147). Petitioner told one of the girls that the back booths were "where the guys can feel around" (R. 130).

The girls employed by petitioner were housed above another tavern known as the Four Aces (R. 47, 56–57, 73, 79, 128), in a building owned

[1] Craig, who was tried together with petitioner and convicted on count IV, did not seek a review of his conviction, upon which he was sentenced to imprisonment for one year (R. 3, 474).

by petitioner and operated by his brother (R. 337–338). In walking to these sleeping quarters from the Derby Club it was necessary to pass the other taverns and night clubs (R. 51). Most of the shows were "strip-tease" acts (R. 167–168), and the signs emphasized that they had "girl" shows (Exs. 1 and 2, R. 50). Petitioner gave some of his girl employees money to see the shows in the area (R. 131–132, 145). He told one that she could "learn lots fast" (R. 149).

Petitioner, who had some interests in oil wells near Evansville, Indiana, made trips to that city where his nephew Craig lived (R. 30, 337). He told Craig that if at any time Craig found a girl who wanted to come, he would give him the money for a ticket to send her up (R. 383–384).

Mary Katherine Hamilton, whose transportation is the basis of count IV of the indictment, lived in Evansville and knew Craig. In the summer of 1952, when she was fifteen years old, she told Craig she wanted a job (R. 30). Craig introduced her to petitioner, who told her that she could have a job as a waitress in Calumet City if she had a statement from her mother that she was 18 years old (R. 30–31). Petitioner wrote out a note, and her mother signed it (R. 31). She then drove to Calumet City with petitioner in his car (R. 31–32), and was put to work as a "B" girl (R. 32–33). The woman bartender at petitioner's club told her to get all the drinks

she could (R. 35). Later the bartender suggested that she could make money by taking "guys out" (R. 36). During her third week at the club, Craig followed her to her room and tried to have sexual intercourse with her (R. 45–46). A few days later petitioner forced her to have intercourse with him (R. 46–47). He told her "he could make dates" for her with oil field workers and she could make quite a bit of money that way (R. 50, 70).

Frieda West, the girl named in count I, was asked by Craig if she wanted to work at the Derby Club in Calumet City as a hostess (R. 71–72). Craig sent her and two other girls by train to Chicago Heights, where petitioner picked them up and drove them to the Four Aces (R. 73, 377). They were employed as "B" girls (R. 73). The woman bartender told Freida that if she would come to the club during the day, she would show her how to make more money than she made as a "B" girl, that there was a day bed in the back room of the club, and that whatever was earned would be shared "with the cash register" (R. 77). Frieda West stayed only one week in Calumet City (R. 75). Petitioner drove her home and asked her to return, but she refused (R. 80).

ARGUMENT

1. Petitioner contends (Pet. 3, 13–14) that the indictment failed to charge a federal offense, in that the immoral purpose alleged—the placing of

a girl "in employment and environment * * * which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality"—is not within the Mann Act. That contention was in effect rejected by this Court three years after enactment of the Mann Act in *Athanasaw* v. *United States,* 227 U. S. 326. In that case, under an indictment alleging the transportation of a girl for "the purpose of debauchery" or "to give herself up to debauchery," this Court upheld the trial court's charge, from which the descriptive language in the indictment in the instant case was extracted almost verbatim, that the jury should determine "whether the employment to which the defendants called the girl [chorus girl] and the influences with which they surrounded her tended 'to induce her to give herself up to a condition of debauchery which eventually and naturally would lead to a course of immorality sexually.'" Since proof of such an intent was held to fulfill the statutory requirement, the detailing of such an intent to add specificity to the general charge in an indictment cannot be considered to detract from the effectiveness of the indictment. Furthermore, this Court endorsed the views of the trial court in that the guilt of the defendants did not "depend upon having the intent themselves to debauch the girl or to intend that some one else should do so,"

because "the statute had a more comprehensive prohibition and was designed to reach acts which might ultimately lead to that phase of debauchery which consisted in 'sexual actions.'" 227 U. S. at 332.

In 1943, the petition for certiorari in *Pine* v. *United States,* 135 F. 2d 353 (C. A. 5), certiorari denied, 320 U. S. 740 (involving allegations of immoral purpose almost exactly the same as those in the instant case) specifically requested this Court to overrule the *Athanasaw* case (No. 111, O. T. 1943). Other lower federal courts have also sustained convictions on the theory of the instant indictment. *United States* v. *Lewis,* 110 F. 2d 460 (C. A. 7), certiorari denied, 310 U. S. 634; *Burgess* v. *United States,* 294 Fed. 1002 (C. A. D. C.); *Beyer* v. *United States,* 251 Fed. 39 (C. A. 9); *United States* v. *Brand,* 229 Fed. 847 (S. D. N. Y.).

2. Petitioner claims (Pet. 15–16) that there was not sufficient proof of his knowledge of the immoral elements surrounding the girls' place of employment and living quarters. As appears from the facts related above (*supra* pp. 5–7), there is sufficient evidence to show not only petitioner's knowledge but his contribution to the immorality of the Derby Club. The jury, by its verdict, evidently rejected his disclaimer of responsibility therefor. His admitted purpose to employ the girls in that particular, known environment, was

therefore sufficient to support the jury's finding that petitioner transported them for employment in an immoral environment, and consequently, for an immoral purpose within the purview of the statute. As the court below stated (Pet. 31):

> * * * Both the place of employment and the place of habitation of the girls mentioned in counts I and IV of the indictment were located in the very midst of a concentrated area of vicious sexual immorality. Defendant saw to it that these girls would learn about their environment. He supplied them with money to attend the night clubs, nineteen of which featured entertainment primarily of a sexual nature.
>
> Life as a "B girl" in defendant's tavern, with its surrounding conditions, would not only tend to cause a girl to give herself up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality, but any other result could not reasonably be expected. * * *

3. Petitioner's contention (Pet. 19) that he was prejudiced by the trial court's refusal to grant him a bill of particulars is without merit. His motion for a bill of particulars (R. 8–18) clearly called for evidentiary matter. Furthermore, as the majority of the court below pointed out (Pet. 25), the clear language of the indictment with its particularization of the term "immoral purpose," supplied petitioner with full details of the charges. Petitioner did not need a bill of par-

ticulars to determine, as he claims (Pet. 19), "whether or not he would be faced with the environment of the place of employment of the girls named in the indictment or the general area of Calumet City"; the only reasonable meaning to be drawn from the indictment was that the environment related to the place and its immediate setting.[2]

4. To show the environment into which the girls were brought, the government sought to prove that acts of prostitution had occurred in the premises above the Four Aces, a few months after the girls named in the indictment had left petitioner's employ (R. 107–110). The man involved, Geno Sarbo, stated he could not remember the incident about which he was questioned and could not remember giving a statement to the F. B. I. (R. 107–108). The court permitted the government to treat him as a hostile witness and to inquire as to specific statements to the F. B. I. admitting sexual relations with Patricia Swartz above the Four Aces (R. 107–108). The witness

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[2] The trial court did not err, as petitioner asserts (Pet. 6), in refusing to give the jury certain instructions requested by petitioner (R. 464, 465–471). Requested instruction No. 7 (R. 465) was given by the trial court verbatim (R. 425). Requested instructions, Nos. 8, 20, 26, 30, 62, 64, 65 (R. 466, 467–468, 469, 470–471), were substantially covered by the charge given (R. 421–422, 423, 427, 428). Requested instructions, Nos. 10, 11, 12, 15, 24, 32, 60, 61 (R. 466–467, 468, 469) were either irrelevant to the issues involved or were couched in such general terms as to be misleading.

claimed the privilege against self-incrimination (R. 109–110). Upon examination by the defense, Sarbo testified that the day before he was called to testify he was advised by the prosecuting attorney that all he had to do at the trial was to "tell the truth about matters pertinent to this case" and that "if you wanted to claim immunity to ask the Judge and if the Judge told you to answer, then you would, but otherwise you were claiming that" (R. 111–112, 110).

The girl involved also claimed the privilege (R. 115). In the discussion that followed out of the presence of the jury the court raised some question as to whether the incidents were not too remote from the dates alleged in the indictment (R. 119–123). The government agreed to withdraw the witness until a foundation was laid (R. 123). Subsequently, after a witness had testified to the general atmosphere in the two blocks of Calumet City in 1952 and the early part of 1953 (R. 162–166), and one Juanita Cooper had testified that she engaged in prostitution above the Four Aces in January 1953 (R. 182–185), the government recalled Patricia Swartz. She again claimed her privilege and was sustained by the trial court (R. 196). Asked whether she had made previous statements to the F. B. I. she said she had repudiated her first statement in her second (R. 193, 196–197). The government also recalled Sarbo and he again claimed

his privilege (R. 201). He testified he did not remember admitting to the F. B. I. that he had had relations with girls above the Four Aces (R. 202–203).

An F. B. I. agent testified that in an interview with Sarbo the latter admitted having intercourse with Miss Swartz above the Four Aces in January 1953, and that he had numerous such relations with other girls in Calumet City in 1952 (R. 205–206). The F. B. I. agent also testified that, in two separate interviews, Miss Swartz admitted having intercourse with Sarbo above the Four Aces in January 1953 (R. 206–207).

Although the majority of the court below (Pet. 34) thought that the government must have known that the witnesses were going to invoke the privilege, the record does not support this view as to the first time the witnesses were called. Since both witnesses had made statements to the F. B. I. and since it was not clear that the possibility of incrimination related to a federal offense, the United States attorney, as his statement to Sarbo shows, properly considered the matter as one to be passed upon by the judge. See *Weinbaum* v. *United States,* 184 F. 2d 330 (C. A. 9). And since the witnesses did prove on the stand to be obviously hostile, it was not an abuse of discretion for the judge to permit them to be treated as such. See *Fields* v. *United*

States, 164 F. 2d 97 (C. A. D. C.), certiorari denied, 332 U. S. 851; *Zimberg* v. *United States,* 142 F. 2d 132 (C. A. 1), certiorari denied, 323 U. S. 712; see also *Banks* v. *United States,* 204 F. 2d 666 (C. A. 8), certiorari denied, 346 U. S. 857.

However, in permitting recall of the witnesses after it was clear that they were going to claim the privilege and in permitting contradictory testimony as to their admissions, which were relevant only to proof of general environment, the court permitted the United States attorney to go rather far afield from the main issues in the case. Nevertheless, we believe with the court below that "the evidence which actually permeated through the extended and confusing proceedings was very slight, uncertain and unconvincing. This meager evidence could not have prejudiced the jury against the defendant, especially in view of the fact that there was sufficient competent evidence in the record to support the verdict" (Pet. 35).[3]

[3] The Government also called Ann Cresno, who, in answer to a question whether she had ever been called to perform an abortion in Calumet City, testified that she once responded to a telephone call to see a girl, who wanted the witness to help her (R. 212–213). On motion by petitioner's counsel, the answer was stricken by the court and the jury instructed to "disregard it" (R. 214). Upon further examination, the witness denied that in September 1952 she had been called to perform an abortion at the Derby Club, or that in 1952 she had several calls in the night club area of Calumet City (*id.*). After the witness admitted that she had currently been in petitioner's company, the trial court declared her

5. Other evidence to which petitioner objects was, we believe, properly admitted on the issue of environment. The testimony of Juanita Cooper as to committing acts of prostitution in the place where petitioner's "B" girls were housed, although not connected with petitioner, and although relating to a period shortly after the dates alleged in the indictment, does show the general atmosphere to which petitioner transported the girls. An environment of the nature shown here does not occur instantaneously. Testimony that no effort was made to evict a woman who came into petitioner's club, disrobed herself and asked customers to buy her drinks (R. 319–221), tended to show the character of the establishment which petitioner was running. Evidence that petitioner's bartender suggested to the girls that they engage in prostitution was directly relevant to the issue of environment, the sole purpose for which it was admitted.

It appears from the record (R. 361) that the

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to be a hostile witness (R. 216). Thereupon she was asked whether she had not previously stated to the F. B. I. that in 1952 she "had been requested on many occasions to perform abortions on women who worked in Calumet City night clubs" (R. 217). Petitioner moved for a mistrial, which was denied, but the trial court admonished "the jury to disregard the testimony of this witness—all of it" (R. 218). In his instructions at the close of the case, the judge specifically instructed the jury "not to pay any attention to any testimony that was stricken out" (R. 429). Under the circumstances, the error in calling this witness was cured.

prosecuting attorney, in cross-examining petitioner concerning a disorderly conduct conviction, was referring to an Amadio who had lived at a certain address in Chicago. Petitioner denied that he had ever been convicted or that he had ever lived in Chicago. This raised a collateral issue of identity, which had to be resolved by independent proof (which the prosecuting attorney apparently was unable to do) before a record of a conviction could be admitted to rebut petitioner's testimony in this respect, if false. Under such circumstances, it was not improper for the prosecuting attorney to let the matter rest with petitioner's denial of any conviction. There is no evidence that the prosecuting attorney brought up the subject of conviction in bad faith. At most, he made an honest mistake of identity.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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